Supreme Court, U.S.
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No. 99-42

In The

Supreme Court of the United States

CENTRAL NEWSPAPERS, INC.,

Petitioner,

v.

MICHAEL J. JOHNSON and McKINLEY KELLER,

Respondents.

On Petition For A Writ Of Certiorari To The Third Circuit Court Of Appeal Of The State Of Louisiana

AVOYELLES PUBLISHING COMPANY AND RANDY DECUIR'S RESPONSE TO CENTRAL NEWSPAPERS, INC.'S PETITION FOR A WRIT OF CERTIORARI

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RULE 29.6 DISCLOSURE STATEMENT

Avoyelles Publishing Company is owned by The Moody Co. and Randy Decuir & Assoc., Inc., two privately held corporations.

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JURISDICTION

Whether this Court has jurisdiction under 28 U.S.C. § 1257 is an issue.

STATEMENT OF THE CASE

We agree with petitioner's Statement of the Case (Pet., at 2-5), with two additions. First, the district court's rulings on both CNI's Peremptory Exception of No Cause of Action and Avoyelles' motion for summary judgment rely on an earlier ruling by the same judge involving reporters for CNI and Avoyelles. That ruling, designated "In Re: A Matter Under Investigation," is referenced and quoted in the district court opinion granting CNI's Peremptory Exception of No Cause of Action. (Pet., App. B at 28a – 29a)

Second, plaintiffs Keller and Johnson appealed certain rulings by the district court in this case directly to the Louisiana Supreme Court on the ground that the district court had declared the wiretap statute unconstitutional. In both instances, the Louisiana Supreme Court found that it lacked jurisdiction by way of appeal because a constitutional issue was not properly presented. On the first occasion, which involved another co-defendant (Aymond), the court remanded the case to the district court. (App. A) On the second occasion, involving Avoyelles, the court remanded the case to the Third Circuit (App. B), which then issued the decision for which review was sought in the state supreme court, and which is now the subject of this writ. On both those occasions, the orders of the Louisiana Supreme Court used the same

language in saying that the district court ruling "never rendered the [statute/Act] unconstitutional." *Keller v. Aymond*, 97-CA-2203, 97-CA-2204 (La. 11/19/97), 702 So.2d 1387 and 98-CA-0552, 98-CA-0553 (La. 4/23/98), 717 So.2d 1171. (App. A and App. B)

ARGUMENT

This Court has directed that Avoyelles Publishing Company and Randy Decuir (hereinafter collectively referred to as "Avoyelles") respond to the petition for certiorari filed by their co-defendant, Central Newspapers, Inc. (hereinafter referred to as "CNI"), publisher of *The Alexandria Daily Town Talk*. CNI has asked this Court to review the constitutionality of Louisiana's wiretap statute as interpreted by a Louisiana state appellate court to apply to a newspaper and its reporter when they publish the contents of an illegal wiretap made and publicly disclosed by a third party.

We agree completely with the petitioner on the merits. Our position from the start has been that to apply Louisiana's wiretap statute (LSA – R.S. 15:1301 et seq.) to the media on these facts offends the First Amendment. We consider the constitutional issue extremely significant not only for our clients but for all media throughout the country, both the traditional newspaper, radio, and television media and also the emerging electronic forms of media. The blatantly wrong-headed ruling of Louisiana's Third Circuit Court of Appeals deserves a very prompt repudiation. In good faith, however, we are compelled to advise the Court that there is an issue as to whether the

petitioner has the necessary Article III standing because, although a party in the case, it was not a party to the ruling for which it requests review. There is also an issue as to whether the ruling below constitutes a "final judgment" as required by 28 U.S.C. § 1257.

As indicated in the petitioner's Statement of the Case (Pet. at 2-5), neither Avoyelles nor CNI pressed the constitutional issue in the district court nor in the separate appeals heard by different panels of the Third Circuit Court of Appeals. Prior to the decision by the second panel, which came on the Avoyelles ruling, both CNI and Avoyelles had argued that the Louisiana courts should construe the state's wiretap statute narrowly so as to avoid a clash with the First Amendment. We did not, and could not, claim that the state wiretap statute was facially unconstitutional, but only that – unless narrowly construed – the statute would be unconstitutional as applied on these facts. Indeed, the state wiretap statute, modeled as it is on the federal wiretap statute, 18 U.S.C. §§ 2510-2520, is constitutionally required under the Fourth Amendment for legitimate use of court-ordered wiretapping by law enforcement. *See Katz v. United States*, 389 U.S. 347 (1967).

In this conflict between the First and Fourth Amendments, Avoyelles has been navigating the narrow straits between the Scylla of the "case and controversy" limitations under Article III and the Charybdis of res judicata under state law. The defendants could not remove the case to federal district court under 28 U.S.C. § 1441 because the plaintiffs' claims, although rooted in privacy issues of the Fourth Amendment, did not "arise under"

federal statutory or constitutional law. *See Moore v. Chesapeake & Ohio Ry. Co.*, 291 U.S. 205 (1934). Nor could a First Amendment defense confer federal question jurisdiction. *See Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149 (1908). It was, nevertheless, necessary to bring the First Amendment issue to the attention of the state courts, as was done in the defendants' answers, in order to preserve for the defendants the option of eventually filing an action under 42 U.S.C. § 1983 in federal district court. *See England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411 (1964).

Prior to the ruling at issue here by the second panel, however, the First Amendment issue was not "ripe" in an Article III sense, *see Poe v. Ullman*, 367 U.S. 497 (1961), because the Louisiana Attorney General's Office had taken the position that the statute would not be applied to the reporters or newspapers involved. *See* the reference to "In Re: A Matter under Investigation" in the district court's ruling granting CNI's Peremptory Exception of No Cause of Action. (Pet., App. B at 28a) The rulings by the state district court had agreed with our position that the state wiretap statute should be narrowly construed not to apply, on these facts, to our clients. Given that neither defendant argued the constitutional issue to either the district or appellate courts, the gratuitous statement by the second panel of the Third Circuit Court of Appeals declaring the statute, as so construed, to be constitutional, while rendering the matter ripe for adjudication in the federal district court or remand, did not constitute a final judgment.

The same lack of finality under res judicata principles which allows the defendants to bring an action in federal

district court raises the issue as to whether this Court has jurisdiction, at this time, under 28 U.S.C. § 1257. While the ruling of the state court below is not a "final judgment" under Louisiana law, it seems to fall within a certain category of rulings which are nevertheless sufficient to confer jurisdiction under 28 U.S.C. § 1257.

I. CNI'S ARTICLE III STANDING IS AN ISSUE

As laid out in the section on "Proceedings Below" of the Petition (Pet. at 3-5), co-defendants CNI and Avoyelles filed motions at different points in time in these consolidated cases before the district judge. Although procedurally distinct (CNI filed a Peremptory Exception of No Cause of Action; Avoyelles filed a Motion for Partial Summary Judgment), the motions were substantively similar in arguing that the wiretap statute did not apply to the actions of the newspapers which are defendants in this case. Both defendants preserved the constitutional defenses in answers to the pleadings, but neither raised the constitutional issue as the basis for its motion. In each instance, the moving defendant argued that Louisiana's wiretap statute should be carefully construed to avoid offending the First Amendment by interpreting the language of the statute not to apply to reporters and newspapers who merely report what another party illegally discloses at a press conference. In ruling on CNI's motion, however, the district judge went further than requested and declared the wiretap statute unconstitutional under the First Amendment as applied to the facts. When the judge later ruled on Avoyelles' motion, he relied on his ruling on CNI's motion.

Although the two similar district court rulings were reversed on appeal, two separate panels of the Third Circuit gave very different reasons for reversal. In the appeal of the ruling in favor of CNI, which raised only state law defenses, the first panel of the Third Circuit Court of Appeals ruled that the trial court should not have reached the constitutional issue. A different panel of the Third Circuit, which reversed the ruling in favor of Avoyelles, gave the statute a very expansive interpretation which imposed absolute liability on reporters and newspapers. (Pet., App. A at 11a-12a) Like CNI, Avoyelles raised only state law defenses. Nevertheless, *sua sponte*, the second panel declared the statute did not violate the First Amendment.

Following the panel decision on the Avoyelles ruling, both Avoyelles and CNI petitioned the Louisiana Supreme Court for writs of certiorari. CNI was permitted by Louisiana law to seek review of the Avoyelles ruling even though CNI had not participated in the appellate court proceeding that produced that ruling. Louisiana law has been liberal in allowing even non-parties to appeal as long as the person is aggrieved by the ruling. LSA – C.C.P. Art. 2086; *Emmons v. Agricultural Insurance Co.*, 158 So.2d 594 (La. 1963); *Haas v. Haas*, 159 So. 384 (La. 1935); *Patten v. Powell*, 16 La. Ann. 128 (1861). CNI, which was certainly aggrieved by the ruling, sought review in the Louisiana Supreme Court, not by appeal, but by a petition for certiorari. The Louisiana Supreme Court's general supervisory jurisdiction, under the state constitution, "is plenary, unfettered by jurisdictional requirements." R. Stetter, *West's Louisiana Civil Appellate*

Procedure § 1:9 (1999). As long as the ruling of the appellate court was not a final judgment, which it was not, nothing bars the state supreme court from reconsidering an issue. *Id.* at § 1:38. Within the Louisiana court system, therefore, there was no doubt that CNI had standing to ask the state supreme court to review the appellate court's ruling as to Avoyelles even though CNI had not participated in that ruling.

The fact that a person has standing to raise an issue in state court does not necessarily confer Article III standing before this Court. In *U.S. ex rel. State of Louisiana v. Jack*, 244 U.S. 397 (1917), this Court considered the Louisiana law which allows a non-party to appeal and said it can have no effect on the procedure in federal courts. *Id.* at 403. *See also Karcher v. May*, 484 U.S. 72, 77 (1987) and *Marino v. Ortiz*, 484 U.S. 301, 304 (1988), citing *Jack*. As stated in *Karcher*, this Court has "consistently applied the general rule that one who is *not a party or has not been treated as a party to a judgment* has no right to appeal therefrom." 484 U.S. at 77 (emphasis added). Although CNI is a party in the case, it may lack Article III standing because it was not a party to the ruling, the ruling was not a "judgment," and the ruling is not conclusive of the constitutional issue.

On the other hand, if this Court treats the ruling below as a "final judgment" for purposes of federal jurisdiction under U.S.C. § 1257, then the petitioner may have an "interest" sufficient to qualify as an "injury" establishing Article III standing. *Cf. Marino*, 484 U.S. at 304. ("The Court of Appeals suggested that there may be exceptions to this general rule [regarding appeal], primarily 'when the nonparty has an *interest that is affected by the trial*

court's judgment.' We think the better practice is for such a nonparty to seek intervention for purposes of appeal") (emphasis added; citation omitted).

II. JURISDICTION UNDER 28 U.S.C. § 1257 IS AN ISSUE

Both the standing and jurisdictional issues involve the petitioner's claim that the ruling constituted a "final adjudication of the federal constitutional issues, in advance of trial, that are conclusive of the federal constitutional defenses of both CNI and Avoyelles." (Pet. at 4-5) The ruling is not a final adjudication in the state courts on the constitutional issue. Nevertheless, the ruling seems to fit within one or two of the exceptions to the normal rules regarding the "final judgment" requirement of 28 U.S.C. § 1257 which were recognized in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

A. "LAW OF THE CASE" IN LOUISIANA

The ruling of Louisiana's Third Circuit constitutes, at most, the "law of the case." We seriously doubt, however, that the *sua sponte* ruling on constitutionality by the second panel can properly be regarded as law of the case. "The 'law of the case' doctrine applies to prior rulings of the appellate court and/or supreme court in the same case." *Griggs v. Riverland Med. Ctr.*, 722 So.2d 15, 19 (La. App. 3d Cir. 1998). In this instance, the second panel's ruling conflicts with prior orders in this same case from the Louisiana Supreme Court. In both those rulings, the Louisiana Supreme Court dismissed in orders stating "the trial court's judgement never rendered the [statute/

Act] unconstitutional." (App. A and App. B) In the first ruling as to another co-defendant (Aymond) the order also stated "although the trial court's judgment makes certain references to the constitutionality of La. R.S. 13:1301 [sic] et seq., it is clear these statements are dicta, since the court has not yet reached the merits of the case before it." (App. A) In dismissing the appeal as to Avoyelles, the Court remanded to the Third Circuit Court of Appeals. It should have been very clear to the second panel of the Third Circuit that the issue of constitutionality was not presented.

The law of the case doctrine "applies to parties who were involved in the litigation at the time of the prior ruling *and had their day in court.*" *Griggs*, 722 So.2d at 19 (emphasis added). CNI did not participate in the Avoyelles appeal before the second panel, so that panel's ruling cannot be applied to it as law of the case. Moreover, just as the state supreme court regarded reference to the constitutionality of the Louisiana statute as dicta, so too are the similar references by the second appellate panel merely dicta. The references cannot therefore constitute "law of the case." *Id.* ("The 'law of the case' is discretionary, being inapplicable to cases in which the prior decision was palpably erroneous or its application would result in manifest injustice").

The Louisiana Supreme Court has laid out the procedural requirements necessary for properly presenting a constitutional challenge to a state statute, including a "hearing . . . held at which the constitutionality of the statute was contested." *Vallo v. Gayle Oil Co., Inc.*, 646 So.2d 859, 865 (La. 1994). No such contest over constitutionality has occurred in this case. As a result, Avoyelles

and CNI have the option, on remand, of moving the state district court to exclude the issue of constitutionality from any judgment. LSA – R.S. 13:4232, "Exceptions to the general rule of res judicata" ("A judgment does not bar another action by the plaintiff . . . (3) When the judgment reserved the right of the plaintiff to bring another action").[1] By electing to do so, the parties can preserve their option to file suit in federal district court challenging the constitutionality of the state wiretap statute as applied. *See England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411 (1964). If they elect not to exclude the constitutional issue, they certainly can raise the issue of constitutionality before the district court, the appellate court and the Louisiana Supreme Court, and argue it fully through the state courts.

B. THE STATE COURT RULING PRESENTED FOR REVIEW AND THE "FINAL JUDGMENT" REQUIREMENT OF 28 U.S.C. § 1257

Although CNI and Avoyelles do have these options under Louisiana law, as just discussed, the jurisdictional question remains this: should CNI and Avoyelles have to undergo a trial for damages under a state statute which clearly violates the First Amendment, when the state supreme court declined the opportunity to enforce the First Amendment? In terms of Louisiana law, the ruling is not a "final judgment." This Court's interpretation of the

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[1] Although framed in terms of "the plaintiff," the provision would apply also to the defendant because plaintiff and defendant are equally bound by a final judgment. *See* LSA – R.S. 13:4231, "Res judicata."

term "final judgment" in 28 U.S.C. § 1257, however, has recognized certain exceptions to the rule which can bring a claim within this Court's jurisdiction. In this case, the Court's jurisdiction depends on a reading of *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), and *Jefferson v. City of Tarrant, Ala.*, 522 U.S. 75 (1997). According to *Cox*, there are "at least four categories of such cases in which the Court has treated the decision on the federal issue as a final judgment for the purposes of 28 U.S.C. § 1257 and has taken jurisdiction without awaiting the completion of the additional proceedings anticipated in the lower state courts." 420 U.S. at 477. Of the four, the first and the fourth arguably apply to this case. Neither the second nor the third categories of exceptions mentioned in *Cox* apply to the present case, primarily because they involve situations in which the federal issue had been finally decided in a state court system. As explained in the "Law of the Case" section above, no such final decision in the Louisiana court system has yet occurred.

Some tension exists between *Cox* and *Jefferson*. While citing *Cox* approvingly, *Jefferson* seems to recognize only two categories of exceptions, those corresponding to the second and third of the four *Cox* categories. 522 U.S. at 82-4. Whereas *Cox* says that there are *"at least* four categories of such cases" 420 U.S. at 477 (emphasis added), *Jefferson* disapproves of expansion beyond *Cox*, as reflected by its disapproval of *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). 522 U.S. at 83-4. ("We now clarify that *Ritchie* does not augur expansion of the exceptions stated in *Cox Broadcasting Corp.*").

Jefferson fails to mention exceptions corresponding to the first and fourth categories discussed in *Cox*, the very

ones which are pertinent to the ruling below. Nevertheless, the language just quoted from *Jefferson* does confirm "the exceptions stated in *Cox Broadcasting Corp.*" *Id.* at 83-4. In the first category of exceptions recognized by *Cox*, the state court ruling may not actually be final, but this Court in appropriate circumstances has "deemed" the decision of the federal issue to be final. By way of example, *Cox* cites *Mills v. Alabama*, 384 U.S. 214 (1966) in which this Court took jurisdiction of a criminal case after a state supreme court ruling had upheld the constitutionality of a criminal statute and remanded the case for trial. In that case, as well as this one, the state court ruling, although not a final judgment, forces a trial on a clearly unconstitutional statute. The present case differs from *Mills* in not being a criminal case. But that fact only makes the argument for jurisdiction stronger in this case because the situation does not involve interference with an ongoing state criminal prosecution. *See Younger v. Harris*, 401 U.S. 37 (1971).

The present case also involves the fourth category of exceptions, the one on which jurisdiction rested in *Cox*. The Court's description of the fourth *Cox* exception is as follows:

> Lastly, there are those situations where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling

> the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come. *In these circumstances, if a refusal immediately to review the state court decision might seriously erode federal policy,* the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation.
>
> 420 U.S. at 482-3 (emphasis added).

Cox does involve a decision by the state's highest court that is "final" as to the constitutional issue. Here, the state's highest court has not ruled; it declined the opportunity to do so. The reasons given for jurisdiction in the fourth category of exceptions, however, do apply to the present case. Just as *Cox* guides our view that the construction of Louisiana's wiretap statute in the ruling below clearly violates the First Amendment, so too that case provides the rationale for claiming jurisdiction in this case.

> The Georgia Supreme Court's judgment is plainly final on the federal issue and is not subject to further review in the state courts. Appellants will be liable for damages if the elements of the state cause of action are proved. They may prevail at trial on nonfederal grounds, it is true, but if the Georgia court erroneously upheld the statute, *there should be no trial at all.* Moreover, even if appellants prevailed at trial and made unnecessary further consideration of the constitutional question, there *would remain in effect the unreviewed decision of the State Supreme Court that a civil action for publishing the name of a rape victim disclosed in a public judicial proceeding may go forward despite*

> *the First and Fourteenth Amendments. Delaying final decision of the First Amendment claim until after trial will 'leave unanswered . . . an important question of freedom of the press under the First Amendment,' 'an uneasy and unsettled constitutional posture (that) could only further harm the operation of a free press.'* On the other hand, if we now hold that the First and Fourteenth Amendments bar civil liability for broadcasting the victim's name, this litigation ends. *Given these factors – that the litigation could be terminated by our decision on the merits and that a failure to decide the question now will leave the press in Georgia operating in the shadow of the civil and criminal sanctions of a rule of law and a statute the constitutionality of which is in serious doubt – we find that reaching the merits is consistent with the pragmatic approach that we have followed in the past in determining finality.*
>
> 420 U.S. at 485-6 (emphasis added; citation and footnote omitted).

As in *Cox*, "there should be no trial at all" in this case.

Both the first and the fourth exceptions involve situations in which this Court has thought that state court rulings were forcing the petitioner to undergo a trial in a situation which was clearly barred by the Constitution, most notably the First Amendment, as in *Cox*. In considering as a factor that "the litigation could be terminated by [a] decision on the merits" 420 U.S. at 486, *Cox* acknowledges that "this factor involves consideration of the merits in determining jurisdiction." *Id.* at 487, n.13. In this case as well, the jurisdictional issue is intertwined with the First Amendment issue. At this point, the newspapers face a trial on the merits in district court unless

the trial court is willing to ignore the ruling of the Third Circuit. Any trial will be a mere formality under the standard adopted by the Louisiana Third Circuit Court of Appeals, which says:

> [W]e find that the trial court erred in holding that criminal willfulness must exist on the part of the defendant newspaper before the plaintiffs can claim a civil remedy under La.R.S. 15:1312. Hence, the newspaper can be held civilly liable for publishing the contents of the taped conversation, even if it was not charged in a criminal proceeding or *even if the elements of criminal willfulness are lacking*.
>
> Pet., App. A at 11a-12a (emphasis added).

If a trial is allowed to go forward, the newspapers will be found liable under this standard because there is no question that they published the material. Under this standard, not even the good faith belief of the newspapers that the materials were legally obtained prevents liability.

CNI and Avoyelles face the dilemma of choosing between requesting the state courts to reconsider the First Amendment issue or filing suit in a federal district court. If CNI and Avoyelles do press the constitutional issue in state court, they may jeopardize their option of filing suit in federal district court. Moreover, the option of filing in federal district court is not without its own "case and controversy" issues. Although such problems can occur in state cases which involve other kinds of constitutional defenses, when a First Amendment defense has been suppressed, simply allowing a state court trial to proceed can "seriously erode federal policy." 420 U.S. at 483.

The Court certainly could, and should, consider whether either or both the first and fourth categories of exceptions identified in *Cox* justify jurisdiction even in the absence of what ordinarily does not constitute a "final judgment." As in *Cox*, the jurisdictional issue is as significant as the substantive constitutional issue under the First Amendment. If otherwise disposed to grant the writ, this Court can decide to carry the jurisdictional issue with the case. A ruling on the jurisdictional issue favorable to the petitioner may well also resolve the standing issue in its favor. If that does not establish a sufficient interest to constitute an "injury" for purposes of standing, or if the Court has doubts, it certainly has the option of requesting to hear argument also from Avoyelles.

Avoyelles agrees completely with the petitioner on the merits and on the importance of the First Amendment issue. Counsel have pointed out jurisdictional and justiciability issues in this case as part of our duty of candor to this Court. Counsel is well aware that the Court itself will eventually discover the Article III issues in the case. Rather than possibly waste the time of this Court, and have the writ dismissed at a later time, as occurred in *Jefferson v. City of Tarrant, supra,* we think it necessary to bring to the Court's attention the issues of Article III standing and the Court's jurisdiction. Nevertheless, both the substantive First Amendment issue on the constitutionality of the lower court's interpretation of Louisiana's wiretap statute, as well as the jurisdictional issue, merit review by this Court.

CONCLUSION

We therefore urge the Court to grant the petitioner's writ of certiorari and carry the jurisdiction and standing issues with the case.

Respectfully submitted,

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September 24, 1999

APPENDIX A – ORDER OF THE LOUISIANA SUPREME COURT RE: TRIAL COURT RULING IN FAVOR OF AYMOND

McKinley KELLER

v.

Carol AYMOND, Jr., et al.

Michael J. JOHNSON

v.

Carol AYMOND, Jr., et al.

Nos. 97-CA-2203, 97-CA-2204.

Supreme Court of Louisiana.

Nov. 19, 1997.

ORDER

Plaintiffs invoke the appellate jurisdiction of this court pursuant to La. Const. Art. V, § 5(D), on ground that the district court declared La.R.S. 13:1301 [sic] et seq. unconstitutional.

Our independent review of the record reveals that the trial court's judgment never rendered the statute unconstitutional. While the trial court's judgment indicates it "conditionally" found the statutes unconstitutional, the judgment goes on to state that this finding is dependent "on the specific facts of this case, which will be revealed at trial." The judgment further states "the merits of the case and/or evidence presented at trial will decide the issue of constitutionality of La.R.S. 15:1301, et seq." Therefore, although the trial court's judgment makes certain references to the constitutionality of La.R.S. 13:1301

[sic] et seq., it is clear these statements are dicta, since the court has not yet reached the merits of the case before it.

Accordingly, the appeals from this judgment filed in this court are dismissed, and the case is remanded to the trial court for further proceedings.

KNOLL, J., not on panel; recused.

FOR THE COURT:

/s/ Bernette J. Johnson
Justice, Supreme Court of Louisiana

APPENDIX B – ORDER OF THE LOUISIANA SUPREME COURT RE: TRIAL COURT RULING IN FAVOR OF AVOYELLES

McKinley KELLER

v.

Carol AYMOND, Jr., et al.

Michael J. JOHNSON

v.

Carol AYMOND, Jr., et al.

Nos. 98-CA-0552, 98-CA-0553.

Supreme Court of Louisiana.

April 23, 1998.

ORDER

Plaintiffs invoke the appellate jurisdiction of this court pursuant to La. Const. Art. V, § 5(D), on ground that the district court declared the Electronic Surveillance Act, La.R.S. 15:1301 et seq., unconstitutional.

Our independent review of the record reveals that the trial court's judgment never rendered the Act unconstitutional. Having concluded that we have no appellate jurisdiction, this appeal is ordered transferred to the Court of Appeal, Third Circuit.

KNOLL, J., not on panel (recused). Rule IV, Part 2, § 3.

FOR THE COURT:

/s/ Jeffrey P. Victory
Justice, Supreme Court of Louisiana